

THE COUNTY BULLETIN

And Uniform Compliance Guidelines

ISSUED BY STATE BOARD OF ACCOUNTS

Vol. No. 353

October 2005

REMINDER OF ORDER OF BUSINESS

October

- 1 Last date for County Board of Tax Adjustment [except Marion County and in a county containing a second class city (November 1)] to complete its duties. (IC 6-1.1-17-9(a))
 - 5, 6, 7 County Auditor's Fall Conference – Indianapolis, Indiana
 - 10 Columbus Day - Legal Holiday (IC 1-1-9-1)
 - 15 Last day to make pension report and payment for third quarter by counties participating in Public Employee's Retirement Fund.
 - 20 Last day to report and make payment of State Income Tax withheld in September to Indiana Department of Revenue.
 - 31 Last day to file quarterly unemployment compensation report with the Indiana Employment Security Division.
- Last day to report and make payment of balance of Federal Income Tax withheld in the third quarter to Internal Revenue Service.
- Last day Annual Tax Sale can be held. (IC 6-1.1-24-2(a)(8))

November

- 1 Issue tax sale certificates to County for properties offered in tax sale for two consecutive years and unsold at the 2005 Tax Sale. (IC 6-1.1-24-6)
- Last date for County Board of Tax Adjustment in Marion County and in a county containing a second class city to complete its duties. (IC 6-1.1-17-9(a))
- Last day for county auditor to certify to the division of state court administration the amount, if any, the county will be providing to the judges salary during the ensuing calendar year. (IC 33-13-12-7.1(b))
- 10 Last day for paying second installment of taxes without penalty. Start preparing for settlement of second installment tax collections. (IC 6-1.1-37-10)
 - 11 Veterans' Day - Legal Holiday. (IC 1-1-9-1)

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REMINDER OF ORDER OF BUSINESS
(Continued)

November

- 20 Last day to report and make payment of State Income Tax withheld in October to Indiana Department of Revenue.
- 24 Thanksgiving Day - Legal Holiday. (IC 1-1-9-1)

December

- 1 On or before this date, certify names and addresses of persons who have money due to them for salaries, wages or other reasons to County Treasurer, for determining if such persons owe delinquent taxes. (IC 6-1.1-22-14)

At regular meeting of Board of County Commissioners consideration may be given to appointments of certain personnel and to bids and awards for highway supplies, materials, and equipment for 2006.
- 20 Last day to report and make payment of State Income Tax withheld in November to Indiana Department of Revenue.
- 26 MERRY CHRISTMAS!! Legal Holiday. (IC 1-1-9-1)
- 31 Review year-end duties.

Post and close all records completely and promptly.

The Auditor should balance with the Treasurer and verify the amount of cash in the Treasurer's office, if field examiners or a successor Treasurer are not available to verify the cash count.

Cash Change Funds issued to any county officer whose term expires must be returned to the County General Fund.

TEMPORARY JUDGES

IC 33-38-11-9 authorizes judges of circuit, superior, or county courts to appoint temporary judges and sets their compensation at twenty-five dollars (\$25) per day. This statute states that the compensation of temporary judges is to be paid by the county.

ELECTRONIC FUNDS TRANSFER

IC 4-8.1-2-7 allows a political subdivision as defined in IC 36-1-2-13 to elect to receive distributions from the State by means of an electronic transfer of funds, and if such election is made, the Treasurer (of State) shall have the funds transferred electronically.

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RECORD OF HOURS WORKED

IC 5-11-9-4 provides that records be maintained showing which hours were worked each day by officers and employees of the county.

This requirement can be met by preparing an endorsement on the payroll claim form showing the general work schedule and listing the specific employees who worked hours different from that general work schedule. Each elected officer or head of each department would be responsible for preparing such endorsement on the payroll claim for their office or department.

If an employee is employed by more than one (1) public agency or in more than one (1) position within that public agency, it is also essential that an accurate record of hours worked be maintained. In these instances we recommended that each agency and department records reflect hours worked in both positions.

TAX SALE – PARTIAL PAYMENTS

IC 6-1.1-24-1.2(b) states:

"(b) A county treasurer may accept partial payments of delinquent property taxes, assessments, penalties, interest, or costs under subsection (a) after the list of real property is certified under section 1 of this chapter."

The acceptance of a partial payment after July 1st will not remove the property from the tax sale because IC 6-1.1-24-1.2(a) states:

"A tract or an item of real property may not be removed from the list certified under section 1 of this chapter before the tax sale unless all delinquent taxes, special assessments, penalties due on the delinquency, interest, and costs directly attributable to the tax sale have been paid in full." (our emphasis)

TAX SALE – DUTIES OF COUNTY AUDITOR

The law governing tax sales makes these requirements on the county auditor prior to the sale:

- (a) Using the certified list prepared by the County Treasurer prepare and record a list of real property eligible for sale in the Tax Sale Record, Form No. 137;
- (b) Prepare a notice with the list mentioned in (a), the location of each parcel, and a statement listing the date, time, place, and terms of the sale; (IC 6-1.1-24-2)
- (c) Post the notice at a public place of posting in the court house at least twenty-one (21) days before the earliest date of application for judgment; (IC 6-1.1-24-3)
- (d) Give notice by publication once a week for three consecutive weeks before the earliest date on which application for judgment may be made; (IC 6-1.1-24-3)
- (e) On or before the date of the sale, list on the record (Tax Sale Record) all properties that will be offered for sale; (IC 6-1.1-24-4)
- (d) Send a notice of such sale to the owner or owners of such real property listed for sale for delinquent taxes or special assessments, to the last known address by certified mail at least 21 days before the earliest date on which the application for judgment and order for sale. (Use Form No. 137A for this purpose) (IC 6-1.1-24-4)

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TAX SALE – DUTIES OF COUNTY AUDITOR (Continued)

- (g) Present proof of the mailing of the notice required in IC 6-1.1-24-4 to the court along with the application for judgment and order for sale. (IC 6-1.1-24-4)
- (h) At least twenty-one (21) days before application for judgments made, send a notice to any mortgagee, who annually requests copy of this notice. (IC 6-1.1-24-3)
- (i) On the day on which the application for judgment and order for sale is made the county auditor assisted by county treasurer shall compare and correct the list, removing delinquencies which have been paid, and subscribe to an affidavit in the form at IC 6-1.1-24-4.6 (a).
- (j) File the application for judgment and order for sale as one (1) cause of action to any court of jurisdiction jointly by the county treasurer and county auditor and shall include the affidavit and corrected list.
- (k) Auditor shall serve as clerk of the sale. (IC 6-1.1-24-5)

The notice required in (b) above must be published in two newspapers published in the county.

It is recommended that the published and posted notice of tax sale indicate which parcels are being offered the second time. Doing this will not only inform the owner of this fact, but will provide an orderly means of determining which parcels are subject to purchase by the county if not sold to an individual.

To relieve a parcel of property from tax sale after it is advertised, the owner is required to pay all delinquent taxes and assessments included in the notice; in other words, the owner must pay all expect the current second installment.

REFUND ON ACCOUNT OF ERRONEOUS TAX SALE

IC 6-1.1-25-10 authorizes refunds to purchasers at tax sale when sales are found to be invalid. The purchaser at an erroneous tax sale is entitled to receive interest at the rate of 6% per annum on the amount paid at the sale and all types and special assessments on the property paid by the purchaser.

FAILURE TO PAY TAX SALE BID

If the purchaser fails to pay his bid, the property shall be offered again for sale and the purchaser shall pay a twenty five percent (25%) penalty of the amount bid. The County Prosecuting Attorney shall initiate an action in the name of the State Treasurer and amounts collected are to be deposited in the county State Fines and Forfeiture Fund for remittance to the State Common School Fund.

DORMANT FUNDS

Most counties have funds that have been inactive or dormant for a number of years. A sufficient fund balance should be retained to pay any outstanding obligations, such as bonds and interest coupons not surrendered for payment. However, to the extent of any balance not needed to cover outstanding obligations, every effort should be made by county auditors to eliminate such funds from the records. The following statutory authorities will be found governing the closing out of the above listed funds.

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DORMANT FUNDS (Continued)

IC 5-1-13-2 provides that when bonds have been issued for any lawful purpose, and the purpose for which the debt was incurred has been accomplished or abandoned, the surplus or balance in such bond fund shall be transferred to the bond and interest redemption fund by the disbursing officer upon order of the legislative body. The funds so transferred are to be used for the payment of interest bearing indebtedness.

IC 36-1-8-5 is a general law which provides that unused and unencumbered balances in county funds which have been raised by levy on all of the taxable property of the county be transferred to the county general fund or rainy day fund, upon authority given by the county council. This section also provides that unused and unencumbered balances in funds for the redemption of poor relief bonds or like obligations for poor relief purposes by levy on all of the taxable property of a civil township be transferred to the poor relief fund of such township.

County auditors should examine any dormant funds carried on their ledgers with the view toward closing out such funds before December 31.

APPROPRIATIONS FOR THE ENHANCED EMERGENCY TELEPHONE SYSTEM FUND

IC 36-8-16-14 states in part:

"...The legislative body of the unit may appropriate money in the fund only for such an expenditure."

IC 36-1-2-9 defines the legislative body as:

"1. ...board of county commissioners, for a county not subject to IC 36-2-3.5 ..."

"2. ...county council, for a county subject to IC 36-2-3.5."

IC 36-2-5-2(b) states: "The county fiscal body shall appropriate money to be paid out of the county treasury, and money may not be paid out of the treasury only under an appropriation made by the fiscal body, except as otherwise provided by law."

IC 36-1-2-6 defines the fiscal body as:

"(1) county council, for a county not having a consolidated city;

"(2) city-county council, for a consolidated city or county having a consolidated city; ..."

Based on the above the legislative body may appropriate the Enhanced Emergency Telephone System Fund, however if the legislative body elects not to appropriate the Enhanced Emergency Telephone System Fund, then IC 36-2-5-2(b) requires the county fiscal body to appropriate this fund. As always this agency encourages a spirit of cooperation between the different branches of government. In an instance where the Board of County Commissioners elects to appropriate this fund, we would suggest the appropriation/budget be submitted to the County Council as well.

CHANGE OF VENUE

Claims

In cases where there has been a change of venue from one county to another, the county where the case originated shall pay to the county to which such change of venue has been taken all such expense incurred by the county to which said change of venue shall be taken (IC 34-35-5-1).

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CHANGE OF VENUE (Continued)

Claims (Continued)

The clerk of the circuit court shall certify and deliver to the county auditor a Change a Venue Claim in duplicate. The county auditor in turn transmits one copy of the claim to the county auditor of the county of origin. The auditor shall enter such charge in the Venue Record (Form No.56).

Upon receipt of payment of the claim, the auditor will enter or cause to be entered in the Change of Venue Record (Form No. 40) in the clerk's office, and under the proper cause number, the name of the county of origin paying the claim, date of receipt of payment and the quietus number issued therefor. The auditor shall record such payment in the Venue Record (Form No. 56).

Chargeable Items of Expense

The changeable items of expense to be audited and allowed by the court pursuant to IC 34-35-5-2 are:

1. Expense of keeping the prisoner, if any.
2. Expense of transporting the prisoner to or from any penal institution.
3. Any extraordinary expense for safekeeping the prisoner.
4. The fee set by the venue Court under IC 33-40-2-5 for pauper counsel, if counsel was appointed by the court.
5. Expense of mileage, meals, lodging and per diems paid for or to jurors.
6. The per diems paid jury commissioners for drawing any special venire.
7. \$5.00 for each day or part of a day a bailiff is engaged in assisting the court in the trial of the cause.
8. \$8.00 for each day or part of a day an official court reporter takes evidence or testimony before the judge or jury concerning the cause.
9. \$10.00 per day for each day of the trial for use of facilities and utilities.
10. Notifying the jury not to attend court after having been summoned, the sum of \$5.00.
11. The amount telephone or telegraph communications made or authorized by the court.
12. \$2.00 per calendar day for clerk attending a court when it is occupied with business concerning change of venue.

RETURNED CHECKS – NON SUFFICIENT FUNDS

An extended effort shall be made by the treasurer to recover funds from checks returned by the depositories as uncollectible. During the process of collecting, the return checks shall be carried as a cash item and the tax duplicate so noted. DO NOT REMOVE OR DELETE THE PAYMENT ON THE TAX DUPLICATE.

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RETURNED CHECKS – NON SUFFICIENT FUNDS (Continued)

The treasurer should immediately notify the maker or drawer of the returned check. We recommend you develop a form letter detailing the procedures and consequences of not making the returned check good. Contact by telephone is usually more expedient; however you should probably follow up your verbal conversation with the form letter. If the drawer comes in to pay make sure you only accept cash, certified check or money order. The amount necessary to redeem the returned check is:

1. The amount of the returned check
2. The actual charge by the financial institution
3. An amount not to exceed twenty dollars

In order to collect #3 above, the board of county commissioners will need to enact a Home Rule Ordinance establishing this returned check fee.

When it is determined that the return item is uncollectible, the treasurer shall attach all related documents to a regular claim to be presented to the board of county commissioners, with an explanation. Upon the commissioner's approval of payment from the general fund, without appropriation, the county warrant is placed in the cash drawer to replace the uncollectible item and deposited as other checks. The amount of tax shall be recharged on the proper duplicate by the auditor.

The amount reimbursed to the treasurer shall be deducted from the amount for apportionment in the appropriate taxing district in the next December settlement and returned to the county general fund. This amount should be shown on line 39 of the apportionment and settlement sheets as "reimbursements to county treasurer for bad checks."

IC 26-2-7-5 allows counties to pursue collection of these returned checks through the courts.

IC 26-2-7-5 states in part: "A person...is also liable for all of the following:

- (1) Interest at the rate of eighteen percent (18%) per annum...
- (2) Court costs...
- (3) Reasonable attorney's fees...
- (4) Actual travel expenses...to...
 - (A) An employee or agent of the holder to file papers and attend court proceedings...
 - (B) Provide witnesses to testify in court...
- (5) A reasonable amount to compensate the holder for time used to...
 - (A) File papers and attend court proceedings...
 - (B) Travel to and from activities...
- (6) Actual direct and indirect expenses incurred by the holder to compensate employees and agents for time used to...
 - (A) File papers and attend court proceedings...
 - (B) Travel to and from activities...
- (7) All other reasonable cost of collection."

IC 26-2-7-6(b) states: "If a person liable under this chapter does not pay to the holder the full amount of the check not more than thirty (30) days after the certified mailing of written notice that the check has not been paid the person is liable for, and the court shall award judgment for, the following, whichever applies:

- (1) If the face amount of the check is not greater than two hundred fifty dollars (\$250), three (3) times the face amount of the check.
- (2) If the face amount of the check is greater than two hundred fifty dollars (\$250), the face amount of the check plus five hundred dollars (\$500)."

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RETURNED CHECKS – NON SUFFICIENT FUNDS (Continued)

If the county chooses to pursue collection by the procedures listed in IC 26-2-7, any amounts collected over the face amount of the check would be receipted to the General Fund.

Bank service charges may be paid to the treasurer along with the bad check at the time or reimbursement by the general fund or since money is already out of the bank account, the county auditor may post a disbursement in the general fund for the service fee. No check is written.

ADVANCE TAX DRAWS

IC 5-13-6-3 allows counties to advance taxes to taxing units amounting to 95% of the amount such unit would get in a distribution of the taxes collected for the unit at the time of advancement. The term "taxes collected" includes property tax and license excise tax. The request for an advance tax draw must be filed at least thirty (30) days before the treasurer is required to make the advance.

The following procedures should be followed:

1. The collections for each taxing district within the municipal corporation, as shown by the records of the county treasurer, should be multiplied by 95%.
2. Divide the answer under (1) by the total tax rate for the taxing district to obtain the factor to be used in apportioning the tax.
3. Multiply the factor by the tax rate for the fund for which the advance draw is requested, to arrive at the maximum amount which can be advanced.
4. Issue an application to pay and quietus in favor of the county treasurer for the amount to be advanced to the credit of the fund for which advanced and issue a warrant therefore in favor of the proper officer of the municipal corporation.

The treasurer shall enter the advance on line 42 on the left side of the Daily Balance of Cash and Depositories and such amounts are deducted from the amount of total taxes collected shown on line 41. This will leave the total amount of taxes to be settled on line 43.

It is imperative that advances be recorded by the treasurer to insure the proper amounts are distributed at Settlement.

COUNTY EXTRADITION FUND

IC 35-33-14 establishes in each county a county extradition fund for the purpose of providing funding to offset the cost of extraditing criminal defendants. Money in the fund may not be used for any other purpose.

The fund consists of the portion of late surrender fees deposited in the fund under IC 27-10-2-12(i). The fund is to be administered by the county auditor and money left at the end of a calendar year does not revert to any other fund, but remains in the County Extradition Fund.

Any police officer incurring expenses in accordance with the Uniform Criminal Extradition Act, IC 35-33-10-3, should file a claim, County Form No. 17, for all expenses incurred in the extradition of prisoners. The claim should be against the county wherein the crime is alleged to have been committed. The expenses should be paid from the County General Fund until such time as the new County Extradition Fund established in accordance with IC 35-33-14 has a sufficient balance. Assuming appropriations are not available for extradition purposes, additional appropriations should be secured in the proper legal manner.

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COUNTY EXTRADITION FUND (Continued)

The amount of reimbursement should be in accordance with IC 35-33-10-3(25) which provides in part, "The expense shall be the fees paid to the officers of the state..."

A county may adopt a local home rule ordinance which provides for travel advances. Naturally, we would expect sufficient documentation such as receipts for all expenses incurred (airline ticket costs, bus ticket costs, etc.). The original receipts plus the remaining cash advance must agree with the total of the travel advance. Any differences will be the responsibility of the police officer.

DISPOSAL OF REAL OR PERSONAL PROPERTY (IC 36-1-11 and IC 5-22-22)

The statutes regarding the disposal of county owner property may be found at 36-1-11. Disposal means the sale, exchange, transfer or lease of property.

- I. Real Property – The disposal of real property is subject to the approval of the executive or the fiscal body, if there is no executive. A public hearing must be conducted before the executive or fiscal body may approve the disposal of real property. This public hearing is subject to the notices required under IC 5-3-1.

In addition, the fiscal body of a unit must approve:

- (1) every sale of real property having an appraised value of fifty thousand dollars (\$50,000) or more;
- (2) every lease of real property for which the total annual rental payments will be twenty-five thousand dollars (\$25,000) or more; and
- (3) every transfer of real property that resulted in;
 - (a) returning gifts back to the original grantor; or
 - (b) returning a tract transferred as a gift from a not-for-profit.

IC 36-1-11 attempts to cover almost every possible type of property disposal conceivable. For example:

- (1) A disposing agent who wants to sell or transfer real property, and as a condition of sale, includes a provision for a leaseback or leaseback with option to repurchase.
- (2) A disposing agent who wants to sell or transfer real property not acquired through eminent domain procedures for any of the following purposes:
 - (1) To promote an economic development project.
 - (2) To facilitate compatible land use planning.
- (3) A disposing agent that may determine
 - (1) the highest and best use of the tract is sale to an abutting landowner;
 - (2) the cost to the public of maintaining the tract equals or exceeds the estimated fair market value of the tract; or
 - (3) it is economically unjustifiable to sell the tract under section 4 of this chapter.
- (4) A disposing agent who wants to transfer or exchange property with a governmental entity.
- (5) A disposing agent who wants to convey property which was a gift and no public funds had been expended to improve the property back to the original grantor.

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DISPOSAL OF REAL OR PERSONAL PROPERTY (IC 36-1-11 and IC 5-22-22) (Continued)

- (6) A disposing agent who may want to convey a tract transferred as a gift by a not-for-profit back to the original grantor.

The above are very specific exceptions to the disposal of property and we would recommend consulting the attorney representing the county, before proceeding.

A disposing agent who wants to sell or transfer real property must:

- (1) have the property appraised by two appraisers. The appraisers must be:
 - (a) professionally engages in making appraisals;
 - (b) licensed under IC 25-34.1 or
 - (c) employees of the political subdivision familiar with the value of the property. The appraisers shall make a joint appraisal for the property.
- (2) After the property is appraised, the county commissioners shall publish a notice in accordance with IC 5-3-1. The terms and conditions of the sale shall be set fourth in the notice.
- (3) The notice must state that bids will be received beginning on the specific date and that the sale will continue from day to day for a period determined by the board of county commissioners of not more than sixty days.
- (4) The property may not be sold to a person who is ineligible under section 16 of chapter 11.
- (5) A bid must be open to public inspection. A bidder may raise his bid, and the raise takes effect after the board has given written notice of that raise to the other bidders.
- (6) The county commissioners may also conduct an auction among the bidders if they consider this appropriate.
- (7) The county commissioner may sell the property to the highest and best bidder.
- (8) The county commissioner may sell the property for less than 90% of the appraised value only after an additional notice of the sale is published.
- (9) The county commissioner may reject all bids.
- (10) The county commissioner may hire a broker or an auctioneer to sell the property.

II. Personal Property:

See IC 5-22-22

PRIVATE ROAD WORK BY COUNTIES

IC 8-19-7-1 outlines the only procedure for placing county equipment and services at the disposal of the "resident taxpayer." Whenever such taxpayer desires the use of county highway equipment or serviced from its employees for the purpose of ditching, grading or hauling gravel or stone or other services on his premises, the resident taxpayer may petition the board of commissioners to use county highway equipment and employees to do any of the work requested.

The board may order the highway supervisor to do any of the work requested if the county equipment is being used in the vicinity of the taxpayer premises and if the equipment is not being needed for county business. The county equipment may not be used for contractual work in any municipality or subdivision of the municipality.

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PRIVATE ROAD WORK BY COUNTIES (Continued)

The board is required to fix the charges for the work, which may not be less than the actual cost. The charge for hauling material may not be less than the actual cost per yard mile, or less than the private prevailing contract price.

The charge should be agreed upon between the resident taxpayer and the board in writing before any such services are performed, and the minutes of the board of commissioners should record all such agreements.

IC 8-19-7-2 states:

"The county highway supervisor shall keep a record of the services performed under section 1 of this chapter, and when the work is completed, the highway supervisor shall prepare an itemized statement of the work and the charges. The highway supervisor shall send one (1) copy to the petitioner, and one (1) copy to the county auditor. The county highway supervisor shall, at the regular monthly meeting of the executive, report work done during the month, and the charges made for the work. The county auditor shall bill the petitioners for the services, and shall credit the money collected to the county highway fund."

IC 8-19-7-3 states:

"If any petitioner fails to pay for any work, the charges shall be charged by the county auditor on the county tax duplicate against that person, and shall be collected in the same manner as taxes. Any amount collected by the county treasurer shall be turned over to the county auditor and credited to the county road fund under section 2 of this chapter."

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QUESTIONS AND ANSWERS FROM COUNTY RECORDER'S 2005 ANNUAL CONFERENCE

Question #1: Is there a law that states a deed must be recorded?

Answer #1: Yes, IC 32-21-4-1.

Question #2: We are getting documents signed in blue ink. We have always been told to use black ink so it is permanent. Is there a law somewhere that states black ink?

Answer #2: The nonconforming statute, IC 36-2-11-16.5, states that the instrument or document is to be typewritten or computer generated in black ink in at least 10 point type. If this is not met then you collect the nonconforming fee. It now becomes an interpretation of the law. If you believe the signature is included in the above definition then the signature should be in black. If you believe the signature is not included in the above definition then the signature could be in any color. Consult your county attorney as to the interpretation of this law.

Question #3: Kentucky doesn't require a notary seal. We get a lot of documents from Kentucky without seals. Can or should we require the seal?

Answer #3: If Kentucky does not require a seal then no seal is necessary for you to record.

Question #4: What is the retention schedule for UCC terminations and purged prior to Article 9? What is retention schedule for UCC's after Article 9?

Answer #4: At 7-1-06, all remaining financing statements covering consumer goods lapse. At 7-1-07, all remaining financing statements with farm products lapse. Only fixtures remain in office. Currently, fixture filings are not on a retention schedule. Financing statements have the same retention schedule as before revised Article 9, six years.

Question #5: IC 6-1.1-5.5-6 - County recorder shall not record conveyance without evidence of completed sales disclosure. If the deed has a duly transferred stamp on it but a disclosure was not given to our office, we are to reject it? I didn't think we were to be involved with the disclosures.

Answer #5: The sales disclosure form goes to the county auditor. We would agree that if the deed is properly stamped then you record it. If no disclosure statement was filed, that is the auditor's responsibility.

Question #6: What is or is there a statute on blanket documents? Do we have to accept them?

Answer #6: IC 32-29-5-1. The recorder may require that each release, discharge, or satisfaction of a mortgage, judgment, or lien or any partial release of these, be recorded on a separate written instrument. If the recorder requires these to be on a separate written instrument, an instrument presented may not contain more than one. If the recorder allows an instrument to contain more than one, the fee for recording is provided in IC 36-2-7-10(b)(3). Sewer liens by law may be on a list and you cannot require individual instruments.

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QUESTIONS AND ANSWERS FROM COUNTY RECORDER'S 2005 ANNUAL CONFERENCE - Continued

Question #7: We have a couple of banks and a title company who would like to set up an escrow account or pay down account for me to draw their daily fees from. Can this be done and how do I set it up?

Answer #7: We will not take an exception to setting up this type of system. You will need to do the following:

- Set up a separate customer account for each client that prepays.
- Set up a control account which is the total of all the separate accounts.
- Deposit the prepayments.
- When recording fees are due from one of these clients, decrease the separate subsidiary customer account and the control account for the amount of the fees.
- Post these fees as collections as normal.
- At all times, the total of all separate subsidiary accounts should equal the control account balance.
- The control account should equal the reconciled amount of prepaid deposits in the bank.

Question #8: We have a bank who wants to only re-record a page that is incorrect with a notation back to the mortgage. I think they should re-record the entire document. Which is proper?

Answer #8: There is no statute that addresses rerecording. If your office made the error then you should probably correct the error without charging. If the customer made the error then they should rerecord and you should charge the appropriate fee.

Question #9: If we have money in our Recorder's Perpetuation Account to pay for the redaction software, can we go ahead and buy it with our perpetuation account or do we have to wait until we accumulate the \$2 fee fund and get appropriation from the county council? If we can pay for it now, will we be reimbursed from the \$2 fee fund back to our perpetuation fund?

Answer #9: Yes, you can pay for the redaction software out of your recorder's perpetuation fund and do not have to wait for the revenue to come in. However, if you do this, then when the revenue does come in your perpetuation fund will not be reimbursed.

Question#10: If we have out plats stored on computer, are we required to keep mylar copies in the office? Are we supposed to record legal drains or reconstruction of legal drains?

Answer #10: IC 5-15-1-1 says that once the plats are recorded, copied, or reproduced you may request permission to destroy by filling out a PR-1 and submitting to your local public records commission.

QUESTIONS AND ANSWERS FROM COUNTY AUDITOR'S 2005 ANNUAL SPRING CONFERENCE

Question #1: Can FIT, CVET and CAGIT be put on one Form 22 or should they be separate?

Answer #1: Yes, they can be put on one Form 22 as long as it is clear how much the taxing unit is getting for each type of tax.

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- Question #2:** If your county usually pays for juveniles housed in boys or girls school from general fund, can those be paid directly from CPRT fund?
- Answer #2:** If you have an account balance with the state when you calculate the excess (January 1 – March 31), you will pay the lesser of the amount owed the state or excess.
- Question #3:** Can a chief deputy take a vacation on her second week of being placed in office?
- Answer #3:** All employees should be following your county's personnel policy. If the policy allows this, then yes they could do this.
- Question #4:** Is a chair considered furniture or supplies if it is a three hundred dollars item? What if you have no furniture appropriation?
- Answer #4:** A chair is a capital outlay not a supply because it's life is longer than one year. Most supplies are expendable and would be used up in a year. If you do not have any funds appropriated for capital outlay, you may want to request some appropriations be transferred to that capital outlay line or request an additional appropriation.
- Question #5:** SEA 529 – Levy controls on Family and Children Fund and CPRTS Fund – If the county must adopt the budget and tax rate sufficient to raise the levy to pay for, why take to council at all??? Council has no authority to reduce apparently – so why go through the motions?
- Answer #5:** Because the law requires this to be done.
- Question #6:** SEA 308 - Elected County Assessors and Township Assessors – Are the ones for now grandfathered in? The next election is in 2006. Who tells the assessors about the pay cuts?
- Answer #6:** We will follow up with the Department of Local Government Finance to determine if they are grandfathered in. The county council is the body that may reduce the compensation. Therefore, they should inform the assessing official or designate someone to do it.
- Question #7:** Deferral and Pretrial – Does "any lawful purpose" include t-shirts, staff meeting meals, ice cream cakes, and fifty dollar conference meal for one person?
- Answer #7:** It could include any of these items if approved by the county council and the prosecutor and can be reasonably justified that these are program expenses. However, we may also take exception to these type of items if they are personal or do not have a county or program purpose.
- Question #8:** Tax Sale – Treasurer does not accept payments on a tax sale parcel on the day of the sale. Is this right? Should they be accepting payments even if they don't want to? Please advise.

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QUESTIONS AND ANSWERS FROM COUNTY AUDITOR'S 2005 ANNUAL SPRING CONFERENCE - Continued

- Answer #8:** IC 6-1.1-24-5(d) – A tract or item may not be sold if all the taxes are paid before the time of sale. Payment should be accepted up to the time the sale starts.
- Question #9:** Our county commissioners don't buy pre-printed cards for employees. However, they do buy the supplies to have birthday cards printed (postcards) for the employees. Can they do this? From "public relations" line item?
- Answer #9:** No
- Question #10:** Mobile homes are such a pain. Any chance of them being moved to the BMV? They could purchase tags every year, similar to Florida. The amounts of uncollectible judgments on mobile homes are unbelievable.
- Answer #10:** Not to our knowledge. Maybe, the county treasurer needs to consider execution on the judgment, which could allow for getting payment from financial institution accounts or wage garnishments. They could also levy and sell the property.
- Question #11:** We've just had a taxpayer sent on active duty to Iraq. His wife had heard about a break in property taxes. What is allowed and when?
- Answer #11:** We are not aware of any special breaks. They still are eligible for the deduction and exemptions but are not aware of any other breaks.
- Question #12:** In our salary ordinance, part time employees are to be paid a certain amount. Can the prosecutor supplement his part time employee hourly wage or is this a violation of our salary ordinance?
- Answer #12:** Prosecutor can supplement the salary but they must get the county council to amend the salary ordinance.
- Question #13:** What can "DRE" machine (from clerk/election) reimbursement money be used for?
- Answer #13:** To purchase the machines or for future election expenses. See the October 2004 Bulletin, Volume 348, Page 10.
- Question #14:** Our County has township trustee/assessors who are not currently certified. Do they have two years from July 1, 2005 to get their certification before they lose part of their compensation?
- Answer #14:** No, but we will do more work with the Department of Local Government Finance to consider those that may have grandfathered in by experience.
- Question #15:** Do all grants have to be appropriated by council? Even if they have no budget?
- Answer #15:** Our audit position is yes they do.

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Question #16: Our County is offering a Health Savings Account (HSA) for insurance. The county will put \$500.00 in an account for the employee to be used for medical expenses. If they don't use it, it rolls over to the next year. When they terminate employment, they can take the money with them. Does this violate our salary ordinance where we establish the annual wage?

Answer #16: This is compensation and should be included in the salary ordinance.

Question #17: Claim Voucher Forms – Is it now, or can it be available on the internet, like the exemption forms, where we can type in the text and print?

Answer #17: Our law does not allow us to require the use of computerized forms, therefore, at this time, we have no plans to put the forms online. However, some counties have computerized this process and we have given them the form approval.

Question #18: If an office charged something, gas, supplies whatever – Can I require the signature of the actual person who charged it or picked it up? If the elected official/department head signs the receipt or invoice is that enough? Can I send a claim back for more information prior to the commissioner?

Answer #18: Credit card receipts should be signed by an authorized purchaser, if the card was used in person. Purchases made over the internet or phone may not require signature on the receipt. The claim should be signed by the department head or person receiving the goods or services for the county. Certainly, you can send back claims if they do not contain all the required information for you to certify it to the Board of Commissioners. In fact, that is your duty to audit claims.

Question #19: In reference to grants, does all paperwork get held in the Auditor's office, regardless of the grant, as long as it is a county held grant? Should all grants be approved by Commissioners/Council? Can grant money be put into commissary and spent from there?

Answer #19: No, all the grant paperwork does not have to be in the Auditor's office. It does need to be made available to us for audit purposes, so the county needs to decide how and where the paperwork is going to be kept. Technically, the commissioners should approve all grants and if an appropriation is needed for that grant, then the council would have to appropriate the fund. No grant money should be going to the Sheriff's Commissary Fund.

Question #20: SB 446 – What is the last date deadline for municipalities to file liens and the auditor to accept for the spring tax roll?

Answer #20: There is no deadline. The municipality may record these liens as often as they deem necessary. They must certify to you within 10 days of recording. We would not take exception to adding these liens to the duplicate the next year's May, if statements are already being printed or have been sent. Do the best you can to implement the statute in a practical manner.

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- Question #21:** SB265 regarding reimbursing grants – When creating grant, i.e. Public Health Coordinator, the fund will be operating in the red. Will SBOA take exception to this? And at the end of the year for the annual report, what do we do?
- Answer #21:** We will not take exception to reimbursement grant funds in the red, if timely reimbursements are requested. The negative balance must be reported on your annual report, your audit report, and in the note disclosures.
- Question #22:** Can you give the statute that requires the county to pay the quarterly amounts to township trustees? Does SB308 address if the trustee relinquishes duties then they also relinquish pay? Does the council have to reappropriate any money and can the assessor request that money?
- Answer #22:** A trustee assessor who has relinquished the assessing duties should not claim per diem for assessing. If they do, the county assessor should not certify the claims for payment. The county assessor would not receive additional compensation. Their compensation in the salary ordinance is payment in full.
- Question #23:** Can someone please explain what can go back into an appropriation line item and what cannot? This is my list so far: Insurance Reimbursements-yes, Grant Reimbursements (current year)-yes, Rebate Checks-no (i.e.-cell phone upgrade rebates), Re-payment of claims paid in error (current year)-yes, L.P.A. Claim Vouchers – From INDOT for bridges-no.
- Answer #23:** There is not a cookbook list of items or situations that you can go to. The situation where something goes to the appropriation is few. You have listed most all of the situations.
- Question #24:** On the form 100-R Certified Report of Names, Address, Duties and Compensation, should an employee, such as a Township Trustee, who gets paid quarterly, be listed on there? I understand it to be those employees who will receive a check in January and for work done in January.
- Answer #24:** It should include all employees. Most trustee/assessors receive a per diem for assessing duties, but are not considered "employees" of the county.
- Question #25:** What can the Auditor's plat book be used for? Can it be used for salaries? Software support fees?
- Answer #25:** Plat book fund can be found in IC 36-2-9-18. These items could be paid from this fund if they are plat book related.
- Question #26:** Does the Clerk's and Recorder's Record perpetuation fund need to be appropriated?
- Answer #26:** No
- Question #27:** The Prosecutor's IV-D fund has approximately \$21,000 in it. Can this be used for pay increases for the child support employees? What about for bonuses for these employees?

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Answer #27: Yes

Question #28: Can the auditor or any member of its staff be a notary?

Answer #28: The auditor cannot be a notary because both positions are lucrative. Deputies can be a notary because IC 5-6-4-3 states deputies are not a lucrative position.

QUESTIONS AND ANSWERS FROM COUNTY CLERK'S 2005 ANNUAL CONFERENCE

Question #1: Small Claims – What is the maximum amount a corporation can file without an attorney?

Answer #1: See IC 34-9-1

Question #2: Always being taught that anything juvenile is confidential. My judge is now ordering restitution and court costs to be made a judgment which means to put in the judgment book. Is this legal?

Answer #2: If the judge says that it is confidential then do not put it in the judgment docket. If it is not confidential, then you should post it to the docket.

Question #3: How many counties charge to perform marriage ceremonies? What do counties charge to perform marriages? What do other counties charge for copies? Do other counties charge attorneys for copies?

Answer #3: You should not be charging to perform marriage ceremonies. IC 33-37-5-1 states you should be charging \$1 for copies unless your legislative body has set a lesser amount. Attorneys should be charged for copies.

Question #4: Has the law changed on the ceiling of \$1,500 for Corporation filings?

Answer #4: This is not a law. Small Claims Rule 8 address this. This rule has not changed.

Question #5: Is it this July 1st that the small claim limit goes up? Statute number?

Answer #5: Yes, the small claim limit goes up July 1, 2005. IC 33-28-3-4 and IC 33-29-2-4 address this.

Question #6: Would you remind everyone that the limit for small claims will rise on July 1st from \$3,000 to \$6,000?

Answer #6: See Answer #5.

Question #7: Small Claims – Has the amount now raised from \$3,000 to \$6,000?

Answer #7: See Answer #5.

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QUESTIONS AND ANSWERS FROM COUNTY CLERK'S 2005 ANNUAL CONFERENCE - Continued

- Question #8:** Is there any way the summer conference can be earlier in June since so many new fees and other new laws start July 1?
- Answer #8:** Unfortunately, the conference cannot be any earlier than the middle of June due to other conferences.
- Question#9:** We were told by SBOA to transfer money from outstanding check report from ISETS to our trust account for any checks over two years old from December of year issued but ISETS says we need to leave it in ISETS so there is a trail as to when money actually received, etc. and they will send to Attorney General. I'm not sure which procedure to use.
- Answer #9:** Leave it in ISETS.
- Question #10:** What would I do with a photo copy of a will if it was filed with an inheritance tax only case? Should it be put in the will book?
- Answer #10:** Go to your judge to find out the way they think you should do it and if you have any other question then call John Newman at State Court Administration.
- Question #11:** If you have a temporary guardianship which expires in 60 days, and is never made a permanent guardianship, how can you close or dispose of that guardianship?
- Answer #11:** You need to ask your judge about this one.
- Question #12:** Section 9 of HB 1153 – Explain about the \$25.00 fee that shall be collected for the deposit of a will and put in the perpetuation fund. What do we do with the will? Record in a special book? Assign a case number ES or EU or MI?
- Answer #12:** A person may deposit a will with the clerk of the circuit court. You charge \$25 which will be deposited into the Record Perpetuation Fund. Upon receipt of the will you issue the depositor a receipt for the will and place the will in an envelope and the seal the envelope securely in the presence of the depositor. Designate on the envelope the date of deposit, name of the testator, and name and address of the depositor. Index the will alphabetically by the name of the testator. These are not public record. Keep the envelope sealed during the testator's life. You shall deliver the envelope to the testator or a person authorized in writing by the testator to receive it. Upon notice of death then you deliver it to the court. You can destroy the will after 100 years from date of deposit if notice of death is not received. You will not be assigning a case number.
- Question #13:** Could you talk/explain about the \$25.00 in HB 1153?
- Answer #13:** See answer # 12.

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- Question #14:** Do I add probation user fees to my juvenile judgment book with reimbursement and child support arrears? Who will satisfy this judgment? Is judgment against the juvenile or his/her parents?
- Answer #14:** Yes, as a general rule you would put this in the judgment book. The judgment would be against whoever has been ordered to pay and be satisfied by that person.
- Question #15:** What constitutes a judgment? Do all judgments go into the judgment docket? How would juvenile get picked up since they are confidential?
- Answer #15:** Whatever the court has ordered to be a judgment. As a general rule, all judgments go into the judgment docket. See answer #2 on juvenile confidentiality.
- Question #16:** HB 1113 - \$10.00 publication not charged, but what about service by attorney's like private process?
- Answer #16:** You should charge the \$10 per defendant irregardless of how the service of process is occurring.
- Question #17:** Now that the pre-marital form is not required, do we have to maintain the old ones or can we destroy them?
- Answer #17:** You must maintain them in accordance with your retention schedule or until you file a PR-1 and receive permission to destroy the records.
- Question #18:** Does the new court costs and fees increase or effect seatbelt violations, which are now like \$26.00?
- Answer #18:** No, it does not effect seatbelt violations. They are still \$25.
- Question #19:** What about seatbelt violations fees? We charge \$26.00. What will they increase to (what fees are added to them)?
- Answer #19:** See Answer #18.
- Question #20:** Does Public Law 10, HB 1600 apply to Probate bonds?
- Answer #20:** No, only to bail bonds. It is a condition of bonding out of jail.
- Question #21:** Marriage License – What is the reason behind the requirement that at least one person must reside in the county in which they apply?
- Answer #21:** We don't know the reason behind it. IC 31-11-4-3 requires the license to be obtained from the county of residence of either of the individuals unless neither is a resident of Indiana.
- Question #22:** IC 33-4-13, alternative dispute resolution. What?? Please explain.

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- Answer #22:** IC 33-23-6. Alternative resolution fee is collected if your county has an approved alternative dispute resolution program. The fee is \$20 on all legal separations, paternity, and dissolution of marriage cases.
- Question #23:** Small Claims – If a defendant is ordered to pay court costs to petitioner does that include the ten dollar service fee? What if only one defendant is ordered to pay, but there were three defendants, does the first defendant have to pay for the extra fees?
- Answer #23:** The service fee is a cost of filing the case. Follow the court order. If it requires collecting the costs of filing the case, the service charge would be a part of the amount collected and it would include all the defendants.
- Question #24:** Child Support Service Fees – Case originated in one county but was venued to another. Who can legally charge the support service fee?
- Answer #24:** They pay in the county that the final court order stipulates.
- Question #25:** May clerk's fees (child support) be used for shortages?
- Answer #25:** No. It can be used to cover bad checks. Also, must file Form 46SG with the county prosecutor.
- Question #26:** Service Fee – One case with multiple children. After awhile one child is removed out of home and moved to home of relative thus one payment being split between two recipients. Now is there 2 annual support fees?
- Answer #26:** No, only one service fee since there is only one order.
- Question #27:** IC 33-37-5-19 – Do we ever collect the two dollar jury fee on a juvenile case?
- Answer #27:** Possibly. Jury fee law says that this fee is collected when the defendant is found to have committed a crime, violated an infraction, or violated an ordinance. If this exists on a juvenile case, then you could collect the jury fee.
- Question #28:** Marriage License – What happens when the application is returned by the performing official and the ceremony was performed after the sixty days of issuance?
- Answer #28:** ???. Let the judge decide.
- Question #29:** Miscellaneous order book. Do we need to type in a hard cover book or can we type in computer and print pages out? Do we have to maintain a big hard back book?
- Answer #29:** Any record in your office can be computerized including order books.
- Question #30:** May clerks "Personalized County Envelopes" be used by attorney's offices prior to any case filed and used as an intimidation factor?

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- Answer #30:** We don't know why any attorney would ever be using your personalized envelopes.
- Question #31:** If state tax liens are entered on a computer, and then expunged by the state should the entire record be voided out, even after credit bureaus have received the information?
- Answer #31:** You need to contact the Indiana Department of Revenue for their rules.
- Question #32:** What about paternity fees, are they classified under the juvenile fees? Same with adoptions?
- Answer #32:** Paternity cases are juvenile cases and adoption cases are civil cases.
- Question #33:** Do the new court costs apply to adoptions?
- Answer #33:** Yes
- Question #34:** My sheriff has approached me about a twelve dollar fee for delivery of warrant notices, etc. It is reported with the auditor, but not collected. Can you give info on this?
- Answer #34:** This is a part of the county's share of the court costs that goes to the general fund. The sheriff gets it when the county appropriates general fund money to pay the pension contributions.
- Question #35:** On a misdemeanor case, is court costs of \$120 added to the pre-trial diversion fees of \$152? If so, are prosecutors aware of this change?
- Answer #35:** Yes, and hopefully the prosecutors are aware of this.
- Question #36:** Why are garnishee defendants included in the \$10.00 service fee? They are only listed because the actual defendant's wages need to be garnished for failure to pay their judgment.
- Answer #36:** Some people believe that garnishee defendants are not considered defendants under the service fee. Some people do. You should consult with your judge to determine if your court considers garnishee defendants as defendants under the fee law.
- Question #37:** We have a new civil case filed. The plaintiff is suing James Smith, Mary Smith, and Mary Smith as trustee for the David Smith trust. Is the additional fee ten or twenty dollars?
- Answer #37:** \$20
- Question #38:** When state tax warrants are not paid and filed as Proceedings Supplemental is there a filing fee?
- Answer #38:** No, IC 33-37-3-1 states the fees described in civil actions may not be collected from the state or political subdivision in an action brought by or on behalf of the state or political subdivision.

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Question #39: Are adoptions considered to be the same as juvenile filing costs? Does guardianship go under civil filing costs or estate probate cost?

Answer #39: Adoptions are civil cases and guardianships are probate cases.

Question #40: My judge came back from a conference last week telling me its law that the green sheets are to be kept separate from the rest of the file, either in a separate (his suggestion) drawer or manila envelope. Is it law? As of now we staple them together and keep them in the back of the file. I thought that was the purpose of the green paper. If someone wants to see the file, you pull the greenies out. Why should we have to pay for all those envelopes?

Answer #40: Ron Miller indicated that the method you use to identify and remove from public disclosure any green pages was up to you. But you should make sure the system you use has integrity. If this is not agreeable with the Judge, ask the Judge to call Ron Miller at State Court Administration.

Question #41: If on a small claim, plaintiff wins judgment, does the defendant still pay original filing fee (the service fee) after judgment?

Answer #41: Yes, if so ordered.

Question #42: Does the state charge for or do they convert scanned images on CD over to microfilm? If so what is the cost to the county for this?

Answer #42: Contact Brian Taylor, Micrographics Lab, at 317-233-3746.

Question #43: Is the amount you can file for in small claims going to increase this year?

Answer #43: See Answer #5.

Question #44: Does the small claims cap still increase from \$3,000 to \$6,000?

Answer #44: See Answer #5.

Question #45: What will the corporation limit be on small claims when the amount limit goes to \$6,000?

Answer #45: See Answer #4.

Question #46: Sheriff Sales – After the sheriff sale has been completed, we received a clerk's return showing the proceeds of the sale. If the sale brings enough profit to satisfy the judgment, do we satisfy it in the judgment book based on the clerk's return, or do we wait until an attorney sends a satisfaction of judgment?

Answer #46: Satisfy it based upon the return.

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- Question #47:** Will SVRS actually provide the signature poll list ready to be printed and put in books or will you provide a data file (as in jury draw info) and we must get this info into poll list form?
- Answer #47:** You can print poll books or you can create an export file for a vendor.
- Question #48:** Filing fees collected by the clerk – Why doesn't the category civil case include language re: \$10.00 fee for added defendants? It is only added to small claims cases on our handout.
- Answer #48:** The new service fee applies to both small claims and civil. Make sure you are using the latest handout.
- Question #49:** Sometimes we receive over payments on traffic tickets. Sometimes they don't include a return address and sometimes they do. If they do, it costs more to send over payments back in postage and checks. Any suggestions? Can it be put towards postage or clerk perpetual?
- Answer #49:** There is no minimum amount of overpayment that can be kept by the county. Any overpayment, no matter how large or small, must either be refunded to the person or if no return address is given, then put into trust and kept five years till certified to the Attorney General as unclaimed property.
- Question #50:** We have old criminal "CR" files back to 1978 that are unpaid. Can we microfilm these as we are running out of filing cabinet space? We have 2 cabinets of these. After microfilming, then can we destroy file? When and if someone comes in to pay, we could print out the case. Or is there any better solution!
- Answer #50:** You should contact John Newman regarding court records.
- Question #51:** Do school corporations, libraries, hospitals, utilities, city and towns, or state pay filing fees for small claims or other civil actions?
- Answer #51:** IC 33-37-3-1 (Added in 2004) - The fees prescribed in civil actions or paternities may not be collected from the state or political subdivision in an action brought by or on behalf of the state or political subdivision.
- Questions #52:** Do the collection companies that help counties collect costs, etc, have any type of certification process? Do they have any guidelines to follow? Is there a maximum amount they can retain?
- Answer #52:** There is no certification process and the guidelines for these services are found in IC 5-22-6.5.
- Question #53:** Does a clerk have to have a first deputy or a chief deputy?

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QUESTIONS AND ANSWERS FROM COUNTY CLERK'S 2005 ANNUAL CONFERENCE - Continued

Answer #53: IC 36-2-16-9 – If a county has a superior court or county court or two or more courthouses in which branches of county offices are maintained, the deputies in charge of the various courts or branches rank as, and shall be compensated as, first or chief deputies.

QUESTIONS AND ANSWERS FROM COUNTY TREASURER'S 2005 ANNUAL CONFERENCE

Question #1: When bankruptcy is discharged and tax is still due, how do we get rid of the tax?

Answer #1: When the bankruptcy court discharges the debt, you will write them off using a certificate of error.

Question #2: When do penalties get taken off for bankruptcies?

Answer #2: When you receive the final discharge from the bankruptcy court.

Question #3: My County is collecting sewer liens for one city, two incorporated towns, and three sewer districts. In the administration of this process, I have found two codes that apply. Is it true that Title 36 applies to municipalities and Title 13 applies to districts? There are many differences in the two laws such as filing dates and billing cycles.

Answer #3: That is correct and unfortunately you have to administer each type of lien under the appropriate code.

Question #4: What special exceptions are given to Veterans who are deployed? Are taxes deferred? Are penalties waived?

Answer #4: We are not aware of any special exemptions under Indiana law.